

ORIGINAL

RECEIVED

Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

OCT 20 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Part 90 of the Commission's)	PR Docket No. <u>93-144</u>
Rules to Facilitate Future Development of)	RM-8117, RM-8030
SMR Systems in the 800 MHz Frequency Band)	RM-8029
)	
Implementation of Sections 3(n) and 332 of)	GN Docket No. 93-252
the Communications Act -- Regulatory)	
Treatment of Mobile Services)	
)	
Implementation of Section 309(j) of the)	PP Docket No. 93-253
Communications Act -- Competitive Bidding)	

To: The Commission

REPLY

The Automobile Club of Southern California ("ACSC"), by its attorneys and pursuant to Section 1.429(g) of the Commission's Rules [47 C.F.R. § 1.429(g)], hereby submits its reply to the Opposition of Nextel Communications, Inc. ("Nextel") filed against ACSC's *Petition for Reconsideration* of the Commission's Second Report and Order (PR Docket No. 93-144, GN Docket No. 93-252 and PP Docket No. 93-253), FCC 97-223, released July 10, 1997, ("Second R&O"). As demonstrated below, Nextel has failed to refute ACSC's showing that, the Commission has failed to adequately consider the interests of non-SMR incumbents and small SMR operators in the 800 MHz band; and that it would be contrary to the public interest for the Commission to auction the 800 MHz General Category channels. While the proposed auction scheme will certainly accommodate Nextel, it will not accommodate the licensees which the FCC has previously recognized as the users of this spectrum.

12/1/97
12/1/97

I. NEXTEL HAS FAILED TO ADDRESS ACSC'S SHOWING THAT THE PUBLIC INTEREST AND SAFETY CONSIDERATIONS REQUIRE CHANGES TO THE GENERAL CATEGORY AUCTION RULES

The gist of Nextel's argument can be summarized in by its statement that "Nextel, the Nation's largest provider of SMR services and an active participant in this proceeding since its inception in 1993, generally supports the Commission's Second R&O." Nextel Opposition at page 2 (emphasis added). Of course Nextel supports the Second R&O, since it forces small businesses and internal users to compromise their rights to use the General Category spectrum, and makes it possible for Nextel to monopolize this frequency band. The problem with Nextel's analysis is that it utterly ignores the overriding public interest in facilitating small business use of the band, and the Congressional mandate that automobile emergency services and similar safety-related uses be exempted from auctions.

Nextel attempts to address ACSC's showing that auctioning General Category spectrum violates its statutory authority. In particular, Nextel argues that Section 309(j)(2)(A) of the Communications Act of 1934, as amended (the "Act") provides for the use of auctions if the "principal use" of the spectrum involves subscriber-based services. Opposition at page 3. However, Nextel conveniently ignores the requirement of Section 309(j)(6)(E) that the Commission continue to use engineering solutions and other means in order to avoid mutual exclusivity, despite the fact that Congress recently reiterated the importance of this requirement. See, ACSC Petition at pp. 6-7.

Likewise, Nextel's argument ignores the statutory requirement that the Commission

consider the characteristics of the proposed service (which already includes a substantial number of small licensees), and the Congressional mandate to ensure participation in advanced telecommunications services by small businesses. *See*, ACSC Petition at pp. 7-8.

In any event, as demonstrated by ACSC and the October 9, 1997 comments of UTC, the "principal use" test relied upon by Nextel has been eliminated by Congress. Instead, the Commission has been given broadened auction authority, in general, but must now abide by a specific exemption for quasi-safety operations, such as the emergency road service provided by ACSC over its General Category frequencies. *See*, ACSC Petition at pp. 2-3. Thus, Section 309(j)(2) of the Act now specifically exempts emergency road services from auctions. The Commission's General Category auction scheme must be revised to comply with this exemption.

Finally, Nextel fails to address ACSC's showing that the grouping of General Category channels into blocks of 50 frequencies denies small businesses, and many other incumbent users, any meaningful opportunity to participate in the auction, in violation of the specific mandates of Section 309(j) of the Act.

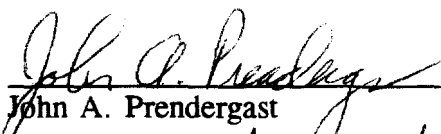
CONCLUSION

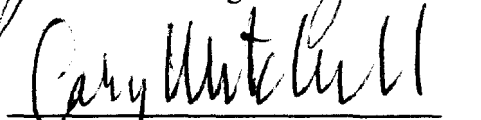
WHEREFORE, for good cause shown, ACSC requests that its Petition be granted and the Commission refrain from auctioning the General Category channels altogether, since such auction would appear to be improper under the Commission's Congressional authority; even if it were assumed, *arguendo*, that the proposed auction was not fatally flawed under the statute, the Commission would have to reconfigure the licensing scheme to auction channels separately.

Respectfully, submitted,

THE AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA

By:


John A. Prendergast


D. Cary Mitchell
Counsel to the Automobile Club of
Southern California

Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W.
Washington, D.C. 20037
(202) 659-0830

Dated: October 20, 1997

CERTIFICATE OF SERVICE

I, Cary Mitchell, hereby certify that on this 20th day of October, 1997, I caused a copy of the Reply of Automobile Club of Southern California to be served, by hand delivery or first-class mail, postage prepaid, to the following:

Alan Shark
Jill Lyon
American Mobile Telecommunications
Association, Inc.
1150 18th Street, N.W., Suite 250
Washington, DC 20036

Allen Tilles
David Weisman
Meyer, Faller, Weisman & Rosenberg
4400 Jennifer Street, N.W.
Washington, DC 20015

Mark Crosby
John M.R. Kneur
Industrial Telecommunications
Association, Inc.
1110 N. Glebe Road, Suite 500
Arlington, VA 22201

Shirley Fujimoto
Daniel Ball
McDermott, Will & Emery
1850 K Street, N.W.
Washington, DC 20006

Robert H. Schwaninger
Brown & Schwaninger
Suite 650
1835 K Street, N.W.
Washington, DC 20006

Mark Golden
Personal Communications Industry
Association
500 Montgomery Street
Suite 700
Alexandria, VA 22314

Robert S. Foosaner
Lawrence R. Krevor
Laura L. Holloway
Nextel Communications, Inc.
1450 G Street, N.W.
Suite 425
Washington, DC 20005

Duncan C. Kennedy, III
Genesee Business Radio Systems, Inc.
992 Carter Street
Rochester, NY 14621



D. Cary Mitchell